WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS—Continued

Section 5—Federally Mandated Programs [Dates in brackets indicate EPA approval date]

5.BAP Business Assistance Program [05/08/95]
5.IM Motor Vehicle Inspection/Maintenance [06/05/80]
5.OXY Oxygenated Gasoline Program [01/20/94]
5.SMP Smoke Management Program [05/04/87]
5.VIS Washington State Visibility Protection Program [05/04/87]
5.VIS.NSR Visibility New Source Review (NSR) for nonattainment areas for Washington [06/26/86]

Supplemental Section A—Reference Material [Dates in brackets indicate EPA approval date]

A.1 Description of Source Test Program for the State Implementation Plan [10/24/84]

Supplemental Section B—Administrative and Procedural Material [Dates in brackets indicate EPA approval date]

B.3 Correspondence
B.3.1 Legal Authority [06/05/80]
B.3.2 Correspondence—Prior to 1991
B.3.2.1 New Source Performance Standards (NSPS) for Tri-Counties [09/23/81]

[FR Doc. 95–15956 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[OH87–1–7075a; FRL–5227–1]

Determination of Attainment of the Ozone Standard by the Cleveland, Toledo, Dayton and the Cincinnati-Hamilton Interstate Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is determining, through direct final procedure, that the Cleveland ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami, and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the 1992 to 1994 ozone seasons that demonstrate that the ozone NAAQS has been attained in each of these areas. On the basis of this determination, USEPA is also determining that certain reasonable-further-progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the Cleveland, Toledo, Dayton and Cincinnati areas for so long as these areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, USEPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective on August 14, 1995 unless notice is received by July 31, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the air quality data and USEPA's analysis are available for inspection at the following location (it is recommended that you contact Richard Schleyer at (312) 353–5089 before visiting the Region 5 office): United States Environmental Protection Agency, Region 5, Air Enforcement Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Written comments can be mailed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE–17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (Act) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (Sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment

Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, Section 171(1) of the Act states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of Section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of Section 182(b)(1).

The USEPA notes that it took this view with respect to the general RFP requirement of Section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564)[2]

Second, with respect to the attainment demonstration requirements of Section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, USEPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain Section 172(c) requirements provided by USEPA in the General Preamble to Title I. As USEPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under Section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of Section 172(c)(9) of the Act. The USEPA has previously interpreted the contingency measure requirement of Section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6)

The USEPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If USEPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The USEPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which USEPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant USEPA guidance and recorded in USEPA's—Aerometric Information Retrieval System (AIRS).

These determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully approved maintenance plan. Please note that redesignation requests have been submitted for the Cleveland, Toledo, Dayton and Cincinnati areas. These redesignation requests are being evaluated in separate rulemaking actions.

Furthermore, the determinations made in this notice do not shield an area from future USEPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other States with respect to the NAAQS (see section 110(a)(2)(D)). The USEPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require such emission reductions if necessary and appropriate to deal with transport situations.

Analysis of Air Quality Data

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

the Cleveland, Toledo, Dayton, and Cincinnati ozone nonattainment areas in the State of Ohio from the 1992 through 1994 ozone seasons.[3] The following ozone exceedances were recorded for the period from 1992 to 1994 (the average number of expected exceedances for this three year period are also presented):

Cleveland: Medina County, 6364 Deerview Lane (1994) - 0.127 ppm; average expected exceedances: 0.5 (based only on two years of monitoring data). Cuyahoga County, 891 E. 152 St. (1993) - 0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0.

Cincinnati-Hamilton Interstate Area: Ohio Portion: Butler County, Schuler and Bend (1993) - 0.131 ppm; average expected exceedances: 0.3. Hook Field Municipal (1993) - 0.138 ppm; average expected exceedances: 0.3. Clermont County, 389 Main St. (1994) - 0.128 ppm; average expected exceedances: 0.3. Warren County, Southeast St. (1994) - 0.139 ppm and 0.128 ppm; average expected exceedances: 0.7.

Kentucky Portion: Campbell County, 9th and Maple (1993) - 0.126 ppm; average expected exceedances: 0.3.

Toledo: Lucas County, 306 N. Yondota (1993) 0.126 ppm, (1994) 0.142 ppm; average expected exceedances: 0.7. Friendship Park (1993) 0.126 ppm; average expected exceedances: 0.3.

Dayton: Clark County, 5171 Urbana Road (1994) 0.125 ppm; average expected exceedances: 0.5. Montgomery County, 2100 Timberlane (1993) 0.125 ppm; average expected exceedances: 0.3.

On the basis of this review, USEPA has concluded that these areas have attained the ozone standard during the 1992–94 period and continues to attain the standard at this time.

15% Plan/Attainment Demonstration Submittal Status

On March 14, 1994, the State of Ohio submitted revisions to the ozone portion of the Ohio SIP which included fifteen percent rate of progress plans for the Toledo, Dayton, Cleveland and Cincinnati ozone nonattainment areas. These fifteen percent plans were deemed complete by USEPA on August 8, 1994. Also included in this SIP revision were attainment demonstrations for the Toledo, Dayton and Cleveland ozone nonattainment areas. These attainment demonstrations were deemed complete on September 14, 1994. Upon the effective date of this determination, the State may withdraw these SIP revisions.

If Ohio withdraws the submitted 15 percent plan or attainment demonstration for Cleveland and Cincinnati areas through the submission of a letter from the Governor or his or her designee, the motor vehicle emissions budget test would no longer apply for conformity purposes in that area[4]. The build/no-build and less than-1990 test would apply until a maintenance plan is approved. This is because the area would not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the submitted SIP is not withdrawn, the budget in that submission will continue to apply for conformity purposes.

However, areas that are already demonstrating conformity to a submitted maintenance plan pursuant to section 51.448(i) (Toledo and Dayton) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build and less-than 1990 tests will apply until the maintenance plan is approved.

Conclusion

The USEPA has determined that the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time.

As a consequence of this determination that the Cleveland, Toledo, Dayton and Cincinnati ozone nonattainment areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures will not be applicable to the area so long as the area does not violate the ozone standard.

It should be emphasized that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. If a violation of the ozone NAAQS is monitored in the Cleveland, Toledo, Dayton and Cincinnati ozone nonattainment areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), USEPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area(s) would thereafter have to address the requirements of section 182(b)(1) and 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on August 14, 1995. However, if USEPA receives adverse comments by July 31, 1995, then USEPA will publish a document that withdraws the action, and will address those comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must

[3] The Cincinnati-Hamilton Interstate Area includes the following counties in Ohio: Butler, Clermont, Hamilton and Warren; and the following counties in Kentucky: Boone, Campbell and Kenton. If a violation were monitored in the Kentucky portion of the interstate area (or the Ohio portion of the Interstate area) these nonattainment area provisions would then be applicable.

[4] For Toledo and Dayton, the Ohio Department of Transportation and metropolitan planning organizations demonstrated conformity to the 15 percent plan and attainment demonstration motor vehicle emissions budgets for illustrative purposes in 1994. The USEPA provided written guidance to the Ohio Department of Transportation and the Ohio Environmental Protection Agency that the submitted maintenance plans for Toledo and Dayton were to be used in lieu of the 15 percent plans and attainment demonstrations in letters dated July 1, 1994, and May 9, 1995. Ohio may withdraw the 15 percent plan and attainment demonstrations submitted for the Dayton and Toledo areas. This will not affect USEPA's interpretation of the applicability of these SIPs for conformity purposes.

prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

The USEPA's final action does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, USEPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 14, 1995.

David A. Kee,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (w) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(w) Determination—USEPA is determining that, as of May 31, 1995, the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of Section 182(b)(1) and related requirements of Section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Cleveland, Toledo, Dayton or Cincinnati-Hamilton Interstate (ambient air monitoring data shall be reviewed for all monitors located in the interstate nonattainment area which includes the State of Kentucky Counties of Boone, Campbell, and Kenton) ozone nonattainment area(s), this determination(s) shall no longer apply.

[FR Doc. 95–15959 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[UT20–3–6773a; FRL–5212–4]

Approval and Promulgation of Air Quality Implementation Plans; Utah; 1990 Base Year Carbon Monoxide Emission Inventories for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the 1990 base year carbon monoxide (CO) emission inventories for Ogden City, Salt Lake City, and Utah County (which includes Provo-Orem) that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990.

DATES: This final rule will be effective August 28, 1995, unless adverse or critical comments are received by July 31, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 8, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the CAA provides the State the opportunity to update its State Implementation Plan (SIP) as needed or to address new statutory requirements. The State is utilizing this authority to include the Ogden City, Salt Lake City, and Utah County 1990 base year CO emission inventories as part of the SIP.

I. Background

As required by the CAA, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas toward attainment. The CAA (section 187(a)(1)) required CO nonattainment areas classified as moderate or serious to submit a 1990 base year CO inventory